IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Suresh Chand Sharma v. Union of India & Ors.

S.B.CIVIL WRIT PETITION NO.3835/1993
under Article 226 of the Constitution of India.

Date of Order : 12th August, 2005

P R E S E N T
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.K.Mishra, for the petitioner.
Mr. Jagdish Vyas, for the respondents.

BY THE COURT :

The petitioner, a member of Railway Protection Force, was served with a charge sheet dated 4.4.1991 under Rule 153 of the Railway Protection Force Rules, 1957 (hereinafter referred to as "the Rules of 1957") charging him with misconduct required to be inquired for imposing a major penalty as provided under Rule 148(2) of the Rules of 1957.

By charge sheet dated 4.4.1991 it was alleged that the petitioner on 18.3.1991 remained absent from duties unauthorisedly from 2.20 hours to 23.45 hours and during this period he misbehaved and illtreated

with the wife and mother of Shri Ghanshyamlal, a Gangman. He also tore their privilege pass and as such shown indiscipline and negligence towards the duties.

The disciplinary authority appointed Shri L.S.Yadav, Inspector (Stores) as inquiry officer to inquire into the allegations levelled against the petitioner. After receiving report of the inquiry officer and other record of the inquiry the disciplinary authority by an order dated 17.6.1991 while agreeing with the findings given by the inquiry officer imposed a penalty of dismissal upon the petitioner.

An appeal preferred by the petitioner giving challenge to the order dated 17.6.1991 too was rejected by the appellate authority by an order dated 14.8.1992, hence the instant petition for writ is preferred by the petitioner.

The contentions of the counsel for the petitioner in the present petition to challenge the order dated 17.6.1991 passed by the disciplinary authority and to the order dated 14.8.1992 passed by the appellate authority are as follows:-

(i)the finding given by the disciplinary authority is not based on any evidence, as

such present one is a case where a punishment is imposed without having any evidence to substantiate the allegation;

(ii)the order passed by the disciplinary authority is not a speaking and reasoned order, as such the same does not disclose any application of mind;

(iii)the copy of the inquiry report was not supplied by the disciplinary authority before imposing penalty of dismissal, as such the same is in violation of provisions of Article 311 of the Constitution of India; and

(iv)the order passed by the appellate authority is not a speaking and reasoned order. The appellate authority has also not considered the objections raised by the petitioner in memo of appeal.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the entire inquiry was conducted against the petitioner in accordance with the procedure prescribed under Rule 153 of the Rules of 1957. The punishment of dismissal was imposed upon the petitioner in accordance with Rule 156 of the Rules of 1957 as the petitioner was found with discredible conduct effecting the image and reputation of Railway Protection Force and was also found negligent of duty resulting in or likely to result in loss to the railway or danger to the lives of persons using the railways. The respondents along with reply also placed on record a detailed statements

of misconduct and punishments imposed upon the petitioner other than the punishment of dismissal which is under challenge in present petition.

Heard counsel for the parties.

The first contention of the petitioner is that the disciplinary authority imposed punishment of dismissal though there was no evidence to reach at the conclusion that the petitioner was guilty for misconduct alleged. The inquiry officer in support of allegations levelled against the petitioner recorded statements of Shri Madho Singh Shekhawat, Commander, Railway Protection Force, Chittorgarh; Shri Suresh Prasad Pachori, Hawaldar, Railway Protection Force, Chittorgarh and Shri Mohar Singh Meena, Nayak, Railway Protection Force, Chittorgarh.

Shri Madho Singh Shekhawat in quite unambiguous terms stated that the delinquent employee remained absent from duties from 2.20 hours to 23.45 hours. He has also stated that during preliminary inquiry he came to know that the delinquent employee was involved in misbehaving and illtreating with the wife and mother of Gangman Ghanshyamlal. Shri Madho Singh also stated that the delinquent employee also misbehaved with khalasi Phoolchand and a complaint in this regard was made before the Government Railway Police, Bhilwara. A criminal case was also lodged

against the delinquent employee for an offence under Section 323 IPC and also under Section 145/146 of the Indian Railways Act. Shri Suresh Prasad Pachori, Hawaldar in his statement stated that on 18.3.1991 delinquent employee was to discharge his duties but he remained absent from 2.20 hours to 23.45 hours. Shri Mohar Singh Meena also stated that the delinquent employee was not on duty during the duty hours.

The inquiry officer also taken into consideration the FIR lodged against the petitioner on 18.3.1991 at Government Railway Police Station, Bhilwara, on basis of which a criminal case bearing No.20/91 was instituted. In view of specific statements of Shri Madho Singh Shekhawat, Shri Suresh Prasad Pachori and Shri Mohar Singh Meena it cannot be said that there was no evidence against the petitioner to substantiate the allegation. The institution of criminal case at Government Railway Police Station, Bhilwara on 18.3.1991 is also not denied by the petitioner. The inquiry officer, therefore, was substantially equipped with the evidence to give a finding of guilty against the petitioner.

In view of the facts stated I do not find any force in the contention of the counsel for the petitioner that he has been penalised without having any evidence to substantiate the allegation.

The second contention of counsel for the petitioner is that the order passed by the disciplinary authority is not a speaking and reasoned order, therefore, the same was passed without any application of mind. It is true that the order passed by the disciplinary authority does not give separate findings by discussing evidence available with regard to misconduct alleged. However, the order passed by the disciplinary authority is a consequence of his agreement with the findings given by the inquiry officer. Hon'ble Supreme Court in the case of Ramkumar v. State of Haryana, 1987 SCC (Suppl.) 582, held that when punishing authority agrees with the findings of inquiry authority and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of inquiry officer and give the same reasons for the findings. In view of law laid down by Hon'ble Supreme Court in the case of Ramkumar (supra) there was no need for the disciplinary authority to discuss the entire evidence and to give his own finding with reasons to hold the petitioner guilty of misconduct as in the present case too the disciplinary authority agreed with the reasons and findings given by the inquiry officer.

The third contention of counsel for the petitioners is that the copy of inquiry report was not supplied to him by the respondents before imposing a

penalty of dismissal. Counsel for the petitioner termed the same as a violation of Article 311 of the Constitution of India. The petitioner is a member of Railway Protection Force which is an armed force. Provisions of Article 311 of the Constitution of India are having no application to the members of armed force, as such the contention raised by counsel for the petitioner as above is absolutely misconceived. The reliance placed by counsel for the petitioner on the judgment of Hon'ble Supreme Court in the case of Union of India v. Mohd. Ramzan, reported in AIR 1991 SC 471, is having no application in present controversy as the petitioner is not a civil servant being a member of armed force.

The last contention of counsel for the petitioner is that the order passed by the appellate authority is not a speaking and reasoned order. The order of appellate authority has not been placed on record by the petitioner. The document available on record as Anx.3 is only the forwarding letter sent by the Divisional Protection Commissioner, Railway Protection Force, Western Railway, Ratlam to the petitioner under which the order passed by the appellate authority was sent to him. However, I have perused the order passed by the appellate authority being available with counsel for the respondents as part of original record. The appellate authority has taken into consideration the entire material available

on record. The petitioner in memo of appeal has raised only one contention and i.e. of malafide of Shri Madho Singh. The allegations levelled by the petitioner are nothing but reckless allegations and cognizance of such reckless allegations cannot be taken into consideration. In view of it I do not find any error in the order passed by the appellate authority also.

Accordingly this petition for writ fails and, therefore, the same is dismissed with no order as to costs.

( GOVIND MATHUR ),J.

kkm/ps.